

AMENDED IN SENATE JUNE 9, 2008
AMENDED IN ASSEMBLY MAY 19, 2008
AMENDED IN ASSEMBLY APRIL 21, 2008
AMENDED IN ASSEMBLY APRIL 8, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2806

Introduced by Assembly Member Karnette
(Coauthor: Senator Lowenthal)

February 22, 2008

~~An act to amend Section 1365 of, and to add Section 1363.002 to,~~
An act to add Section 1363.002 to the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 2806, as amended, Karnette. Common interest developments: board member education.

The Davis-Stirling Common Interest Development Act provides for the creation and regulation of common interest developments. Existing law requires the Department of Consumer Affairs and the Department of Real Estate, to the extent existing funds are available, to develop an online education course for the board of directors of an association regarding the role, duties, laws, and responsibilities of board members and prospective board members, and the nonjudicial foreclosure process.

This bill would, commencing July 1, 2010, require each current member of the board of directors of an association that is comprised solely of residential separate interests who is serving a term of at least 12 consecutive months to provide a statement to the board indicating

whether he or she has completed an educational course on the law of common interest developments and, if applicable, when the course was completed. The bill would impose certain requirements on the board of an association relating to the disclosure of information about the completion of such a course by board members, ~~and the amounts budgeted for these educational costs.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) There are more than ~~35,000~~ 41,000 common interest
4 developments in California, comprising more than 4,300,000
5 dwellings. Dwellings in those common interest developments
6 comprise approximately one-fourth of the state's housing stock.

7 (b) Common interest developments are governed by associations.
8 Managing an association is a complex responsibility. Association
9 members elect volunteer boards of directors and those directors
10 may have little or no experience serving in that capacity. In order
11 to properly discharge their duties, directors must comply with
12 many laws and, in so doing, must interpret and enforce those laws.
13 Directors must also interpret and apply the provisions of the
14 association's governing documents and rules. Additionally, board
15 members may not fully understand their rights and obligations
16 under the law. Mistakes and misunderstandings are inevitable and
17 may result in serious, costly, and divisive problems.

18 (c) While litigation is one form of dispute resolution, the
19 principal remedy for disputes should be based on a policy of
20 prevention. Litigation is not a positive means of resolving
21 association issues when the disputants are neighbors and must
22 maintain ongoing relationships. The adversarial nature of litigation
23 can disrupt these relationships, creating animosity that degrades
24 the quality of life within an association, shifts the focus of the
25 board, and increases the likelihood of future disputes. Litigation
26 may increase the expenses of an association, which must be paid
27 by its members through increased assessments. In some cases,
28 homeowners cannot personally afford to file or defend a lawsuit.

1 (d) Frequent changes in law make the law more difficult to
2 understand and apply while imposing significant additional costs
3 on associations.

4 (e) Education will provide association directors with a
5 significantly greater awareness of the laws that prescribe
6 association operational procedures and will better equip them to
7 govern an association more efficiently and prudently. Board
8 members' increased knowledge and proficiency in understanding
9 the law will provide them with the means to proactively and
10 responsibly use a nonjudicial approach to resolve disputes and to
11 limit the frequency and severity of disputes within an association.

12 SEC. 2. Section 1363.002 is added to the Civil Code, to read:

13 1363.002. (a) Each member of the board of directors of an
14 association that is comprised solely of residential separate interests
15 who is serving a term of at least 12 consecutive months and each
16 candidate for election to the board shall, in a timely manner,
17 provide a statement to the board indicating whether he or she has
18 completed an educational course on the law of common interest
19 developments and, if applicable, when the course was completed.
20 Each member of, or candidate for, the board of directors may also
21 provide a description of any other relevant education or
22 qualifications to the board.

23 (b) Each association shall annually disclose, in writing, the
24 following information to the association members:

25 (1) The provisions of this section.

26 (2) The statements provided to the board pursuant to subdivision
27 (a).

28 (3) A statement included in the ballot materials disclosing, for
29 each candidate, based upon the statement provided to the board
30 pursuant to subdivision (a), whether he or she has completed an
31 educational course on the law of common interest developments
32 and, if so, when the course was completed. The statement shall
33 also include a description of other relevant education or
34 qualifications of the board member if one was provided by the
35 board member pursuant to subdivision (a). The statement shall
36 also specify the expiration date of each board member's term of
37 office, if applicable.

38 (c) The declarant and the developer of a common interest
39 development shall be exempt from the requirements specified in

subdivision (a) until the board of directors governing that development is composed of a majority of separate interest owners.

(d) Nothing in this section shall in any way operate to invalidate the good standing of a member of an association or remove or abrogate the board member immunities contained in Section 1365.7, or in Section 7231.5 of the Corporations Code. The immunities contained in those sections shall apply whether or not an officer or director has taken the educational course specified in subdivision (a).

(e) The completion or failure to complete a course may not be used as evidence to establish a breach of fiduciary duty of a board member.

(f) This section shall become operative on July 1, 2010.

~~SEC. 3.—Section 1365 of the Civil Code is amended to read:~~

~~1365. Unless the governing documents impose more stringent standards, the association shall prepare and distribute to all of its members the following documents:~~

~~(a) A pro forma operating budget, which shall include all of the following:~~

~~(1) The estimated revenue and expenses on an accrual basis.~~

~~(2) A summary of the association's reserves based upon the most recent review or study conducted pursuant to Section 1365.5, based only on assets held in cash or cash equivalents, which shall be printed in boldface type and include all of the following:~~

~~(A) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component.~~

~~(B) As of the end of the fiscal year for which the study is prepared:~~

~~(i) The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components.~~

~~(ii) The current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain major components.~~

~~(iii) If applicable, the amount of funds received from either a compensatory damage award or settlement to an association from any person or entity for injuries to property, real or personal, arising out of any construction or design defects, and the expenditure or disposition of funds, including the amounts expended for the direct and indirect costs of repair of construction or design defects. These amounts shall be reported at the end of the fiscal year for which the study is prepared as separate line items under cash reserves~~

1 pursuant to clause (ii). Instead of complying with the requirements
2 set forth in this clause, an association that is obligated to issue a
3 review of their financial statement pursuant to subdivision (b) may
4 include in the review a statement containing all of the information
5 required by this clause.

6 (C) The percentage that the amount determined for purposes of
7 clause (ii) of subparagraph (B) equals the amount determined for
8 purposes of clause (i) of subparagraph (B).

9 (D) The current deficiency in reserve funding expressed on a
10 per unit basis. The figure shall be calculated by subtracting the
11 amount determined for purposes of clause (ii) of subparagraph (B)
12 from the amount determined for purposes of clause (i) of
13 subparagraph (B) and then dividing the result by the number of
14 separate interests within the association, except that if assessments
15 vary by the size or type of ownership interest, then the association
16 shall calculate the current deficiency in a manner that reflects the
17 variation.

18 (3) A statement as to all of the following:

19 (A) Whether the board of directors of the association has
20 determined to defer or not undertake repairs or replacement of any
21 major component with a remaining life of 30 years or less,
22 including a justification for the deferral or decision not to undertake
23 the repairs or replacement.

24 (B) Whether the board of directors of the association, consistent
25 with the reserve funding plan adopted pursuant to subdivision (e)
26 of Section 1365.5, has determined or anticipates that the levy of
27 one or more special assessments will be required to repair, replace,
28 or restore any major component or to provide adequate reserves
29 therefor. If so, the statement shall also set out the estimated amount,
30 commencement date, and duration of the assessment.

31 (C) The mechanism or mechanisms by which the board of
32 directors will fund reserves to repair or replace major components,
33 including assessments, borrowing, use of other assets, deferral of
34 selected replacements or repairs, or alternative mechanisms.

35 (D) Whether the association has any outstanding loans with an
36 original term of more than one year, including the payee, interest
37 rate, amount outstanding, annual payment, and when the loan is
38 scheduled to be retired.

39 (4) A general statement addressing the procedures used for the
40 calculation and establishment of those reserves to defray the future

1 repair, replacement, or additions to those major components that
2 the association is obligated to maintain. The report shall include,
3 but need not be limited to, reserve calculations made using the
4 formula described in paragraph (4) of subdivision (b) of Section
5 1365.2.5, and may not assume a rate of return on cash reserves in
6 excess of 2 percent above the discount rate published by the Federal
7 Reserve Bank of San Francisco at the time the calculation was
8 made.

9 The summary of the association's reserves disclosed pursuant
10 to paragraph (2) shall not be admissible in evidence to show
11 improper financial management of an association, provided that
12 other relevant and competent evidence of the financial condition
13 of the association is not made inadmissible by this provision.

14 Notwithstanding a contrary provision in the governing
15 documents, a copy of the operating budget shall be annually
16 distributed not less than 30 days nor more than 90 days prior to
17 the beginning of the association's fiscal year.

18 (5) Commencing in its first fiscal year beginning after June 30,
19 2009, and each fiscal year thereafter, a line item for board member
20 education costs. The amounts budgeted for those costs may pay
21 or provide reimbursement for all or a portion of the reasonable
22 expenses incurred by board members that are directly associated
23 with enrollment in an educational course on the law of common
24 interest developments. The payment or reimbursement shall not
25 exceed, for each board member, one hundred twenty-five dollars
26 (\$125) for course tuition, fees, and materials, which may not
27 include food or lodging, and travel expenses.

28 (b) Commencing January 1, 2009, a summary of the reserve
29 funding plan adopted by the board of directors of the association,
30 as specified in paragraph (4) of subdivision (e) of Section 1365.5.
31 The summary shall include notice to members that the full reserve
32 study plan is available upon request, and the association shall
33 provide the full reserve plan to any member upon request.

34 (c) A review of the financial statement of the association shall
35 be prepared in accordance with generally accepted accounting
36 principles by a licensee of the California Board of Accountancy
37 for any fiscal year in which the gross income to the association
38 exceeds seventy-five thousand dollars (\$75,000). A copy of the
39 review of the financial statement shall be distributed within 120
40 days after the close of each fiscal year.

1 ~~(d) Instead of the distribution of the pro forma operating budget~~
2 ~~required by subdivision (a), the board of directors may elect to~~
3 ~~distribute a summary of the pro forma operating budget to all of~~
4 ~~its members with a written notice that the pro forma operating~~
5 ~~budget is available at the business office of the association or at~~
6 ~~another suitable location within the boundaries of the development,~~
7 ~~and that copies will be provided upon request and at the expense~~
8 ~~of the association. If any member requests that a copy of the pro~~
9 ~~forma operating budget required by subdivision (a) be mailed to~~
10 ~~the member, the association shall provide the copy to the member~~
11 ~~by first-class United States mail at the expense of the association~~
12 ~~and delivered within five days. The written notice that is distributed~~
13 ~~to each of the association members shall be in at least 10-point~~
14 ~~boldface type on the front page of the summary of the budget.~~

15 ~~(e) A statement describing the association's policies and~~
16 ~~practices in enforcing lien rights or other legal remedies for default~~
17 ~~in payment of its assessments against its members shall be annually~~
18 ~~delivered to the members not less than 30 days nor more than 90~~
19 ~~days immediately preceding the beginning of the association's~~
20 ~~fiscal year.~~

21 ~~(f) (1) A summary of the association's property, general~~
22 ~~liability, earthquake, flood, and fidelity insurance policies, which~~
23 ~~shall be distributed not less than 30 days nor more than 90 days~~
24 ~~preceding the beginning of the association's fiscal year, that~~
25 ~~includes all of the following information about each policy:~~

26 ~~(A) The name of the insurer.~~

27 ~~(B) The type of insurance.~~

28 ~~(C) The policy limits of the insurance.~~

29 ~~(D) The amount of deductibles, if any.~~

30 ~~(2) The association shall, as soon as reasonably practicable,~~
31 ~~notify its members by first-class mail if any of the policies~~
32 ~~described in paragraph (1) have lapsed, been canceled, and are not~~
33 ~~immediately renewed, restored, or replaced, or if there is a~~
34 ~~significant change, such as a reduction in coverage or limits or an~~
35 ~~increase in the deductible, as to any of those policies. If the~~
36 ~~association receives any notice of nonrenewal of a policy described~~
37 ~~in paragraph (1), the association shall immediately notify its~~
38 ~~members if replacement coverage will not be in effect by the date~~
39 ~~the existing coverage will lapse.~~

1 ~~(3) To the extent that any of the information required to be~~
2 ~~disclosed pursuant to paragraph (1) is specified in the insurance~~
3 ~~policy declaration page, the association may meet its obligation~~
4 ~~to disclose that information by making copies of that page and~~
5 ~~distributing it to all of its members.~~

6 ~~(4) The summary distributed pursuant to paragraph (1) shall~~
7 ~~contain, in at least 10-point boldface type, the following statement:~~
8 ~~“This summary of the association’s policies of insurance provides~~
9 ~~only certain information, as required by subdivision (f) of Section~~
10 ~~1365 of the Civil Code, and should not be considered a substitute~~
11 ~~for the complete policy terms and conditions contained in the actual~~
12 ~~policies of insurance. Any association member may, upon request~~
13 ~~and provision of reasonable notice, review the association’s~~
14 ~~insurance policies and, upon request and payment of reasonable~~
15 ~~duplication charges, obtain copies of those policies. Although the~~
16 ~~association maintains the policies of insurance specified in this~~
17 ~~summary, the association’s policies of insurance may not cover~~
18 ~~your property, including personal property or, real property~~
19 ~~improvements to or around your dwelling, or personal injuries or~~
20 ~~other losses that occur within or around your dwelling. Even if a~~
21 ~~loss is covered, you may nevertheless be responsible for paying~~
22 ~~all or a portion of any deductible that applies. Association members~~
23 ~~should consult with their individual insurance broker or agent for~~
24 ~~appropriate additional coverage.”~~